IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

CUSTOMS APPEAL NO.2 OF 2006

Jawahar P. Kanungo — Appellant
vs.
Union of India & ors. — Respondents

Mr.Anil Balani with Mr.Jerry Lewis for the appellant.

Mr.M.I. Sethna, Senior Advocate with Mr.R.Ashokan for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 8th March, 2006

P.C.

Heard Mr.Anil Balani, the learned counsel for the appellant.

2. The learned counsel for the appellant submitted that the Customs, Excise and Service Tax Appellate Tribunal was not right in imposing penalty for the first time without considering written submissions/defence of the appellant. He would also contend that by invoking Section 111(o) of the Customs Act, the penalty could not have been imposed upon the appellant.

3. The arguments have no merit. The Tribunal has given solid reasons for imposing penalty of Rs.25 lacs on the appellant besides confirming the duty demand against the importer firm-USL and confiscation of the goods.

4. In paragraph 16, the Tribunal considered the statement of the appellant and also the statement of Shri N.J.D'costa who happened to be the appellant's employee. The statement of the proprietor of other firm M/s.Jabee & Co. was also considered. Paragraph 16 the Tribunal's order reads thus:

> "16. Shri Jawahar Kanungo is also liable to penalty, as his involvement in the offence is clearly established. He has admitted that as a Proprietor of M/s.Manek Metal Corporation and Director in M/s.Kanungo Trading & Metals Pvt.Ltd. and Manek Metal Trading Pvt.Ltd. he handled imports of USL, maintained liaison with M/s.H.G.Mehta & Company and M/s.Jabee & Co. for clearance of raw material imported duty free by USL and that he had directed M/s.Ashok Goods Transport to transport the raw material imported duty free by USL. He has also admitted that he had paid the Customs Duty and CHA charges from his company's account for the import by USL. He has operated the bank account of USL at Gulalwadi Branch of Bank of Baroda and paid Rs.13,85,000/- from M/s.Kanungo Trading & Metals Pvt.Ltd., Rs.46,51,000/- from M/s.Manek Metal Corporation and Rs.2,82,650/- from M/s.Manek Metal & Trading (P) Ltd. into the USL account, but he could not provide any details for the reasons for doing so. He has admitted that during the period from April 1993 to December 1994 a total amount of Rs.6.77 crores has been deposited in USL account, Rs.3.43 crores was deposited from out of the accounts of his companies and these amounts have not been reflected in the account of USL. Shri A.S.Bhattar stated that nobody of USL was preparing the pay-in-slip and depositing the cheques/Demand Drafts/Banker's cheques in the account of USL, that he used to give blank cheques duly signed by him as authorized person to operate USL account in Bank of Baroda with Shri Jawar Kanungo for withdrawals or issue as required from time to time and that Shri Jawar Kanungo was

depositing the money in this account. The involvement of Shri Jawahar Kanungo is further brought out from the statement of Shri N.J.D'Costa, who is an employee of Jawahar Kanungo that he used to sign the letters of USL addressed to Customs House Agent and that he had signed the documents as Managing Director of USL. He was also giving instructions to CHA M/s.H.G./Mehta &Company for clearance of the goods on Kanungo's instructions. The proprietor of other CHA firm M/s.Jabee & Company admitted that Shri Jawar Kanungo had approached him for clearance of consignments in the name of USL and documents for clearance were received from Shri Jawahar Kanungo or from his staff and Shri Jawahar Kanungo was giving them instructions for clearance and delivery of goods. The Power of Attorney holder for CHA firm, M/s.H.G.Mehta & Company has also admitted that all the import related documents and correspondence in respect of USL were given to him by Shri Jawahar Kanungo and that the payments for clearance of goods were received by his firm from Shri Jawahar Kanungo either by cheque/demand drafts or in cash. Further, Shri Ashok Kumar Doshi, Proprietor of M/s. Ashok.Ashok Goods Transport has admitted that he was making available the trucks in the docks area for transporting the goods imported by USL, on the request of Shri Kanungo. We, therefore, impose a penalty of Rs.25,00,000/- upon Shri Kanungo."

5. It is pertinent to note that in his statement, the appellant admitted that money was paid to USL account by his firm and that he had associated himself with booking the material for import by USL. The statement of N.J.D'costa, the employee of the appellant was also recorded and the involvement of the appellant is clearly reflected from his statement as well.

6. In the facts and circumstances, therefore, the

imposition of penalty by the Tribunal after setting aside the order of the Commissioner of Customs cannot be said to suffer from any error of law.

7. No substantial question of law arises in the appeal.

8. Appeal is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)